

The Broadcast Team, Inc.
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RE: CG Docket No. 02-278

The Broadcast Team, Inc. is filing these comments in response to a Request for Comment propounded by the Federal Communications Commission pursuant to 47 CFR §§ 1.415, 1.419. The Broadcast Team, Inc. is a service provider that can broadcast thousands of prerecorded messages to residences and businesses around the country. We have been in business since 1992 and we have always endeavored to comply with all laws applicable to our services. The FCC has before it a petition requesting a ruling concerning whether or not the California Civil Code is in conflict with the TCPA with regards to the delivery of prerecorded messages. More specifically, in response to Mark Boling of California, is the California Civil Code § 1770(a)(22)(A) in conflict with the TCPA?

The California Civil Code § 1770 (a)(22)(A) declares illegal the “dissemination of an unsolicited prerecorded message.” Boling argues that this provision is not in conflict with the Federal Communications Act that declares illegal the initiation of any telephone call to any residential telephone line using an artificial or prerecorded voice (It is also important to note that the California Civil Code does not make distinctions between the dissemination of a prerecorded message by intrastate or interstate method nor the delivery of a message to a residence or a business). The petition attempts to differentiate between initiating the delivery of a prerecorded message and its dissemination. The petition of Boling lacks any basis upon which to lay an intellectual foundation. Boling’s contention that there is a difference between disseminating a prerecorded message and initiating a prerecorded message lacks merit. One need only look at the Merriam-Webster Dictionary to understand that there is very little difference between initiate and disseminate:

INITIATE: 1: to cause or facilitate the beginning of: set going

DISSEMINATE: 1: to spread abroad as though sowing seed;

2: to disperse throughout

Both words are nearly synonymous and to claim differently would be absurd. The purpose and result of the California Code is clear, to regulate the delivery of prerecorded messages to all recipients, whether these calls originate within the state of California or not.

There is a larger question that has been overlooked by Boling’s petition. Boling focuses on only one aspect of the California Civil Code, the difference between two words. Boling’s petition automatically assumes that the other provisions of California Civil Code § 1770 are not in conflict with the TCPA. Specifically § 1770 prohibits the delivery of prerecorded messages to both residents and businesses and it purportedly applies to both intrastate and interstate calls. These provisions are clearly more restrictive than, and are in conflict with, the TCPA.

The Communications Act, specifically section 227 of the Act, establishes

Congress' intent to provide for regulation exclusively by the Commission of the use of the interstate telephone network for unsolicited advertisements by facsimile or by telephone utilizing live solicitation, autodialers, or prerecorded messages. By its terms, the TCPA shall not "preempt any State law that imposes more restrictive *intrastate* requirements or regulations on, or which prohibits (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; (B) the use of automatic telephone dialing systems; (C) the use of artificial or prerecorded voice messages; or (D) the making of telephone solicitations."

According to the Federal Code, California can regulate and restrict *intrastate* commercial telemarketing calls. The Communications Act, however, precludes California and all other states from regulating or restricting interstate commercial telemarketing calls (including prohibiting prerecorded messages). California and other states cannot apply its statutes to calls that are received in California and originate in another state or calls that originate in California and are received in another state.

The Rules regarding the Communications Act note that although states may impose more stringent restrictions on intrastate telemarketing, state rules that attempt to apply to interstate telemarketing that are inconsistent with and more restrictive than the Commission rules *negate* the federal objective of creating uniform national rules. The result is increased compliance costs for companies that use the telephone network to communicate to a national consumer database. California's attempt to prohibit the delivery of prerecorded messages to anyone in California, whether business or residence, intrastate or interstate is clearly contrary to and more restrictive than those Rules.

The law clearly states that the FCC has exclusive jurisdiction of interstate communications and limits the purview of state law to that of jurisdiction over calls originating and terminating in a single state. As such, the FCC should state firmly that the California Civil Code §1770 is in conflict with and is preempted by the TCPA.

Sincerely,

James Skow
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The Broadcast Team, Inc.